

Key Points of the General Agreement between Publisher and Subito e.V.

The General Agreement is a licence agreement to be entered into between an individual publisher and Subito e.V.

Term of the Agreement

The Term of the agreement is an initial period of three years and shall automatically be extended by consecutive one year periods, unless terminated on time. The publisher has a first right to terminate the agreement after a two-year **Test Phase** of the agreement, on the condition that the volume of **SLS** deliveries (see below) increase at an unacceptable rate, or conflicts with the publisher's business model.

Primary Obligations

The publisher grants Subito a non-transferable and non-exclusive right to reproduce individual articles from publications (journals), and to transmit copies of these articles by mail, fax or email (by way of a Digital Rights Management (DRM) System). The publisher has the right to withdraw **publications** from the scope of the agreement under specific conditions determined by the agreement (please see the exact definition of "Contractual Publication" in the agreement). The agreement grants the same licence to the Supplier Libraries of Subito that are situated in Germany, Austria and Switzerland as the Supplier Libraries reproduce and transmit copies of articles, and not Subito itself. Subito is obliged to impose on the Supplier Libraries by contract the minimum conditions set out in **Annex 1**. These minimum conditions largely correspond to the conditions which Subito itself has to comply with. Subito has to pay the publisher a royalty fee for each copy sent to its client. The applicable royalty fee depends on the client group the client of Subito belongs to.

Scope of Application

In General

The copies of the articles solely emanate from printed sources on stock at one of the Supplier Libraries. Each time a (electronic or printed) copy is ordered by a client of Subito, the copy has to be newly reproduced from the printed sources available at one of the Supplier Libraries. Any intermediary copy reproduced (e.g. for delivery by fax or email) may not be used again, but has to be deleted according to the conditions set out in the agreement. Thus copies may not be held on stock, and no electronic database of articles shall be established or used.

The agreement covers the delivery of copies from the German speaking countries, Germany, Austria, Liechtenstein and Switzerland (GALS) to other countries but does not cover the delivery within GALS. If the copy is delivered by email, Subito and its Supplier Libraries have to use a Digital Right Management (DRM) System as set out in **Annex 2**, to limit the use and misuse of electronic copies.

In Particular

The agreement covers two specific services offered by Subito:

1. The Subito Direct Customer Service – International (**SDS**)

SDS is a Subito service delivering copies to **End Clients**, namely clients that order and receive copies directly from Subito, without an intermediary Client Library.

2. The Subito Library Service – International (**SLS**)

SLS is a Subito service delivering copies to **Client Libraries (Client Group 3)** that execute the order of one of their users (**End Client**). In this service, therefore, order and delivery do not directly take place with an **End Client**. The user of the Client Library has to belong to **Client Group 1** (Please see **SLS** below).

Main elements of the **SDS** are as follows:

Royalty Fees SDS

Royalty fees applicable to **SDS** are to be determined for each publication and in Euros by the publisher, and communicated to Subito with help of **Annex 5**. The publisher has the possibility to differentiate the royalty fees as follows:

- By **Client Group 1 or 2**. The groups distinguish between two groups of End Clients, such as students and staff at research institutions financed by public funds (meant to benefit from a lower tariff at publisher's discretion), and other End Clients, such as commercial users (please see the exact definition of the client groups in the agreement).
- By type of delivery (mail, fax or email).
- The differentiation shall not exceed a total of six different fees per publication.

Territory

SDS includes deliveries to the entire world, except Germany, Austria, Liechtenstein and Switzerland (GALS).

Main elements of the **SLS** are as follows:

Scope of Application

- Subito only delivers to **Client Libraries (Client Group 3)** that are publicly financed and approved as such by Subito e.V. (please see the exact definition of the **Client Library** in the agreement).
- The Client Libraries shall only order and forward copies to users,
 - that are registered as users of the Client Library; and
 - that comply with the criteria of Client Group 1, such as students and staff at research institutions financed by public funds (please see the exact definition of the Client Group 1 in the agreement); and
 - that are located within the **SLS** Territory (described below) at the time of the request and at the time when the delivery is received.
 - If the transmission takes place electronically the printout has to be picked up on the premises of the Client Library.

Royalty Fees SLS

Subito offered the following Royalty Fees for **SLS** to the publisher:

- for the first year from the Date of **SLS** Implementation € 3.5 per delivered copy of an article,
- for the second year from the Date of Implementation € 4.0 per delivered copy of an article,
- for the third year the Royalty Fee for **SLS** remains negotiable. The parties have to take certain conditions into account for the negotiation.

Territory

The **SLS** includes in principle deliveries to countries within the borders of geographical Europe & Russia, except GALS (please see the exact definition in **Annex 9** of the agreement).

Customer License Agreement

For **SDS** and **SLS**, Subito shall conclude with its End Clients and Client Libraries a Customer Licence Agreement. That agreement shall impose the minimum conditions set out in **Annex 10** to ensure the publisher's right.

Implementation

For the Implementation of the agreement, the publisher has to provide the Metadata of its publications to Subito as set out in **Annex 7** of the agreement and has to determine the royalty fees for the **SDS** and forward the data as per **Annex 5**. Additionally, the publisher shall provide Information to Subito regarding its contact person and bank account as per **Annex 3**. This information should be forward to Subito without delay but shall be forwarded no later than five weeks after the signing of the agreement.

As soon as Subito implements **SLS** and **SDS**, Subito has to provide to the publisher during the two-year Test Phase a monthly statistical analysis as set out in **Annex 4 A** of the deliveries of copied articles of **all** publishers made in the preceding month. The statistical analysis only indicates the total amount of deliveries made distinguishing between the countries and the 3 client groups the copies have been delivered to. Moreover, Subito will provide to each publisher within 30 days of the last day of each Calendar Quarter an individual credit memo (report) that lists all deliveries of articles supplied pertaining to the individual publisher and the royalty fees Subito owes the publisher.

Unless otherwise agreed, the transfer of the Royalty Fees is due within 30 days of the last day of each Calendar Quarter and has to be transferred by Subito to the bank account indicated by the publisher with help of **Annex 3**.

Accession Agreement

Each Supplier Library of Subito that intends to offer a document delivery service comparable to the Subito service is obliged to conclude an Accession Agreement as set out in **Annex 11** with the publisher. The Accession Agreement of **Annex 11** obliges the Supplier Libraries to

- comply with conditions in line with the General Agreement, or to find another agreement with the publisher, and

- if they intend to practice the Inter-Library Lending and Use, to only practice it via mail and traditional fax; further electronic transmission strictly has to be exercised via the Subito service.

Contractual Freedom

For the sake of clarification, it is emphasised that the General Agreement constitutes only one possible implementation of a license agreement between a publisher and Subito. Negotiation of terms and conditions of any agreement with Subito remains up to each publisher.

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